

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

TONY DAUGHERTY,

Petitioner,

v.

CIVIL ACTION NO. 5:12-cv-00043

HUTTONSVILLE CORRECTIONAL CENTER,

Respondent.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the Petitioner's December 6, 2011 *Petition* under 28 U.S.C. § 2254 (Document 1), brought on the grounds that juror prejudice and ineffective assistance of counsel marred his state court conviction and subsequent *habeas* proceedings.

By *Standing Order* (Document 14) entered on January 10, 2012, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On October 30, 2014, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 111), wherein it is recommended that this Court deny the Respondent's Motion for Summary Judgment (Document 32) and refer the matter back to Judge VanDervort for further proceedings with respect to the merits of the Petitioner's claims, including any claims he might raise regarding ineffective assistance of counsel. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by November 17, 2014.


Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Respondent filed a *Response to Magistrate's Proposed Findings and*

Recommendation (Document 115), in which he indicates that he disagrees with the legal conclusion in the PF&R, but waives the right to object. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Respondent's Motion for Summary Judgment (Document 32) be **DENIED** and that this matter be **REFERRED** back to Judge VanDervort for further proceedings respecting the merits of the Petitioner's claims.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: November 20, 2014


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA